

IN THE MATTER OF LICENSE NO. 322673
Issued to: William W. EVANS

DECISION OF THE COMMANDANT
UNITED STATE COAST GUARD

1822

William W. EVANS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 6 August 1969, an Examiner of the United States Coast Guard at Providence, R.I., suspended Appellant's seaman's documents for one month on nine months' probation upon finding him guilty of negligence. The specification found proved alleges that while serving as master on board M/V BLOCK ISLAND under authority of the license above captioned, on 31 July 1969, Appellant negligently navigated his vessel so as to cause it to collide with an anchored vessel, the yacht BONAVENTURE.

At the hearing, Appellant was represented by non-professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence certain documents and the testimony of two witnesses.

In defense, Appellant offered in evidence his own testimony and that of two other witnesses.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending Appellant's license for a period of one month on nine months' probation.

The entire decision was served on 6 August 1969. Appeal was timely filed on 2 September 1969. Although Appellant had until 4 January 1970 to perfect his appeal nothing has been presented since the initial notice of appeal.

FINDINGS OF FACT

On 31 July 1969, Appellant was serving as master of M/V BLOCK ISLAND and acting under authority of his license.

BLOCK ISLAND is a vessel which operates in season between New London, Connecticut, and Block Island.

At about 1545 on the date in question, BLOCK ISLAND got underway from its moorings in Great Salt Pond and proceeded into the channel linking the Pond to Block Island Sound. In the channel the vessel was slowed down to allow passage for entering vessels.

At this time an announced sail vessel race, notice of which had appeared in a Local Notice to Mariners, was bringing vessels into the area on a leg from Montauk, N.Y., to Great Salt Pond. The finish line of the leg was at Buoy "2" outside the entrance to the channel leading into Great Salt Pond. To mark the line the yacht BONAVENTURE was anchored about fifty yards northward of the buoy so as to identify and time racing vessels passing between it and the buoy.

When BLOCK ISLAND cleared the narrow channel from Great Salt Pond, visibility had decreased to not more than fifth yards. BONAVENTURE was sounding the bell signal required of a vessel at anchor. BLOCK ISLAND, proceeding at five knots, had radar in operation. The radar showed many vessels in the area. Appellant was advised that there was no radar contact dead ahead. While the lookout was reporting fog signals he did not report a bell.

BONAVENTURE was sighted at a distance of not more than fifty yards. Appellant went hard right and backed full but his vessel collided with BONAVENTURE.

At a speed of five knots, BLOCK ISLAND could not be stopped within one hundred yards of advance.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is alleged that:

- "(a) The yacht "BONAVENTURE" with an unlicensed and physically handicapped Master obstructing a channel in fog in violation of 33USC 403, and since under 65 feet, 33USC 210 (Article 25).
- (b) The "BONAVENTURE" was equipped with an inefficient bell in violation of 33USC 191 (Article 15). Neither the M/V BLOCK ISLAND lookout, mate on watch, or myself heard the bell, although a most diligent watch was being maintained.
- (c) The "BONAVENTURE" failed to display the black ball

as required by 33CFR 80.25 which can only be described as an act of poor seamanship practice regardless of length, Act. 29 (33USC221). When sighted she was thought to be under way and capable of her own navigation.

- (d) I was found to be a fault for being unable to stop within half the distance of visibility count [sic] decisions under 33USC192 (Art. 16) are clear: regardless of visible distance, vessel must be under control and able to maneuver at all times. This was definetly [sic] the case in this collision.
- (e) Yacht races should not terminate at an entrance buoy to a busy harbor, placing an undue hazard on the boats themselves and a passenger ship with over 600 souls. The "BONAVENTURE", a race commitee [sic] boat was a menace and a hazard to life and to safe navigation in the position it placed itself. She could have safely anchored nearby; but out of the entrance channel.
- (f) A licensed officer is burdened with this appeal as the only recourse, the "BONAVENTURE" is found to be privileged [sic], free to commit the same acts or privileges [sic] again with no license in jeopardy and apparently no responsibility because of his non-qualifications and inexperience."

APPEARANCE: Appellant, pro se.

OPINION

I

The first observation to be made on Appellant's grounds for appeal is that no statutory fault of another vessel or contributory negligence on the part of its master or operator will exonerate a negligent pilot or master of a vessel involved in a collision. We are not concerned in these proceedings with determining civil liability; whether one or another or both vessels are at fault. The question before the Examiner here was whether Appellant was negligent regardless of any possible fault on the part of the vessel with which he collided. See Decision on Appeal No. 1556.

II

It is, of course, irrelevant that the owner of BONAVENTURE was

physically handicapped. BONAVENTURE was not anchored so as to obstruct a channel; it was several hundred yards from the entrance to the narrow channel that connects Great Salt Pond with Block Island Sound. There was ample room for BLOCK ISLAND to have maneuvered in either direction around the yacht.

III

There is no evidence to require a finding that BONAVENTURE's bell was inefficient. The bell was described on the record and there is evidence that was being rung. The fact that neither Appellant nor his lookout heard the bell is not so overwhelmingly persuasive that the Examiner should have found that fault of BONAVENTURE with respect to its bell rendered the collision inevitable.

IV

Failure of BONAVENTURE to show a black ball is irrelevant for three reasons. The first is the general principle set out in "I" above. The second is that 33 CFR 80.25 does not apply to motorboats.

Most important is the fact that even if BONAVENTURE had been exhibiting a black shape the result would have been no different. Appellant came hard right and backed full, in the belief, he asserts, that BONAVENTURE was underway and moving, presumably, from BLOCK ISLAND's right to its left. It is true that if BONAVENTURE had been so moving there might not have been a collision, but that would not have been because of any lack of negligence on Appellant's part. Even if Appellant had known BONAVENTURE was at anchor because of sighting a black ball, he could have done no more than come hard right and back full.

V

The fundamental fault of Appellant, which renders all contentions against a finding of negligence irrelevant, is that he was traveling too fast for the conditions obtaining. When the courts say that moderate speed in fog is a speed at which a vessel can be stopped in half the distance of visibility, they do not qualify it by saying that the rule applies only provided that another vessel is obeying the rules, or is sounding a proper fog signal, or is showing an appropriate day signal.

As the Examiner pointed out, there is a presumption of negligence on the part of a vessel which collides with an anchored vessel. This is correct even when visibility is not limited. It is more imposing in limited visibility. With fog limiting the

visibility to not more than fifty yards and with a vessel underway being unable to stop and avoid collision with an anchored vessel immoderate speed is conclusively proved.

VI

Where and when yacht races should terminate are not matters for consideration here. BONAVENTURE was anchored in an area in which it had a right to anchor. Had the visibility been good Appellant probably would have avoided collision. Since the visibility was extremely poor the fault of Appellant cannot be affected by the location of the finish line of the race. His speed was immoderate not only with respect to BONAVENTURE but with respect to all other vessels in the vicinity.

VII

The distinction in the law between treatment of licensed officers and unlicensed pleasure boat operators has no bearing on the consideration of this case. For violation of statutes there are civil and criminal remedies for use in the case of an unlicensed operator. For negligence of such an operator there is also the possibility of being saddled with civil liability in an action between the parties. The unlicensed person is not immune, but it is obvious that the licensed person must be under additional control simply because he has a license.

ORDER

The order of the Examiner dated at Providence, R.I., on 6 August 1969, is AFFIRMED.

T.R. SARGENT
Vice Admiral, U.S. Coast Guard
Acting Commandant

Signed at Washington, D.C., this 21st day of September 1970.

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